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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,668	11/12/2003	Vince D'Amelio	9353-8RE	8850
7590	09/28/2006		EXAMINER [REDACTED]	TRAN, KHOI H
James R Cannon Esq Myers Bigel Sibley & Sajovec PA PO Box 37428 Raleigh, NC 27627			ART UNIT [REDACTED]	PAPER NUMBER 3651

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/706,668	D'AMELIO ET AL.	

<b>Examiner</b>	<b>Art Unit</b>	
Khoi H. Tran	3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **3** MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 31 July 2006.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-77 is/are pending in the application.  
 4a) Of the above claim(s) 4,13,22,23,30-56 and 64-77 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-3,5-12,14-21,24-29,57-60,62 and 63 is/are rejected.  
 7) Claim(s) 61 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

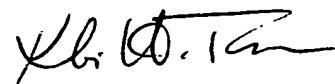
#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.



#### **Attachment(s)**

- Notice of References Cited (PTO-892)
- Notice of Draftsperson's Patent Drawing Review (PTO-948)
- Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 11/03,04/05.

**KHOI H. TRAN**  
**PRIMARY EXAMINER**

- Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- Notice of Informal Patent Application
- Other: \_\_\_\_\_.

### **DETAILED ACTION**

This application is a reissue of 09/614,974. The application is concurrent with litigation process. Applicant's specific request to go forward with the examination process, filed on 10/13/2005, is acknowledged.

#### ***Election/Restrictions***

1. Applicant's election without traverse of Group I, Species I, represented by claims 1-3, 5-12, 14-21, 24-29, and 57-63 in the reply filed on 07/31/2006 is acknowledged.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not known which claimed structure comprises at least 4 lugs.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3, 5-12, 14-19, 57, 59, 60, 62, and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donovan et al. 3,485,434.

Donovan et al. '434 disclose a stack of nonfoam trays that are separable via automatic destacking equipment (column 4, lines 52-57). Each tray comprises at least three separation structures 53 (Figure VI, column 4, lines 42-46) to maintain balance condition of the tray and to provide separation between the trays during handling and shipping. The separation structures on the trays are positioned at different locations, hence different patterns, between consecutive trays (Figure VI, column 3, lines 41-46). The separation structures are shown and considered to be part of the walls of the trays. Each tray comprises nearly vertical, semi-rigid sidewalls that include a pair of smooth contour corner portions and a center portion having plurality of vertical ribs (Figures II and III). Each tray comprises circumferential flange. Donovan et al. '434 trays are usable in merchandising and packaging meat environment. Wherein, the trays are automatically denested via automatic destacking equipment, meat product deposited therein, and wrapped with film material (column 1, lines 23-43, column 4, lines 31-57). Hence, it is obvious that Donovan et al. '434, when utilize in a consumer meat packaging environment, anticipates the process of: dispensing the nested nonfoam trays via a dispensing/destacking machine, placing case ready meat product into the dispensed trays, sealing or wrapping the packaged trays to provide a case ready product that is ready to be displayed for sale in a display case at a retail point of sale.

In regards to claims 3 and 12 Donovan et al. '434 is silent as to the specifics of providing four separation lug structures to each tray. Instead, Donovan et al. '434 express that at least three or more lugs are provide on each tray to maintain sufficient balance for the tray (column 4, lines 42-46). It would have been obvious for a person

with ordinary skill in the art, at the time the invention was made, to have provided to Donovan et al. '434 trays with at least four separating lugs, according to a design size of the tray, because they provide appropriate balancing structure for the tray.

In regards to claims 6-9 and 16-19, Donovan et al. '434 trays may be made from polyethylene terephthalates and polycarbonates, which are notoriously well known in the art as suitable gas barriers, suitable for cooking in conventional and microwave ovens, and able to withstand temperatures in a dishwasher (paragraph bridging columns 5 and 6).

In regards to claim 59, Donovan et al. '434 trays comprise vertical ribs extend into the bottom of the trays (Figures I and II).

In regards to claim 60, Donovan et al. '434 trays comprise corner portions that are free of vertical ribs (Figures I and III).

In regards to claims 62 and 63, Donovan et al. '434 trays comprise plurality of ribs on the bottom of the trays, and the vertical ribs are provided on more than 50% of the surface of the trays (Figures I and II).

6. Claims 20, 21, 24-29, and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donovan et al. 3,485,434 in view of Golner 3,583,623.

In regards to claims 20, 21, and 58, Donovan et al. '434 disclose process for preparing ready meat products per claimed invention as explained in paragraph 5 above. However, it is silent as to the specifics of the flange having downward lip of a length of at least 3/16 of an inch.

Golner '623 discloses nonfoam trays for packaging meat products for consumers. The trays comprise downward extending lip having the dimension of 1/20 to 1/2 of the height of the tray (Figure 3, column 4, first full paragraph). Golner '623 teaches that downwardly turned lip on a flange provides safety handling of the trays (column 2, lines 34-37). The downwardly turned lip eliminates sharp horizontal edges that often cut user's fingers.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided to at least portion of Donovan et al. '434 flange with downwardly turned lip having the dimension of 1/20 to 1/2 of the height of the tray because it eliminates sharp edges for safe handling, as taught by Golner '623. It is obvious that Donovan et al. '434 modified downwardly turned lip could have the dimension of at least 3/16 of an inch depends of the height of Donovan et al. '434 the trays. For example, Donovan et al. '434 trays having 2 inches height (column 2, line 54) could have a one-inch downwardly turned lip according to one of Golner '623 ratios.

In regards to claim 25 Donovan et al. '434 is silent as to the specifics of providing four separation lug structures to each tray. Instead, Donovan et al. '434 express that at least three or more lugs are provide on each tray to maintain sufficient balance for the tray (column 4, lines 42-46). It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided to Donovan et al. '434 trays with at least four separating lugs, according to a design size of the tray, because they provide appropriate balancing structure for the tray.

In regards to claims 26-29, Donovan et al. '434 trays may be made from polyethylene terephthalates and polycarbonates, which are notoriously well known in the art as suitable gas barriers, suitable for cooking in conventional and microwave ovens, and able to withstand temperatures in a dishwasher (paragraph bridging columns 5 and 6).

***Allowable Subject Matter***

7. Claim 61 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

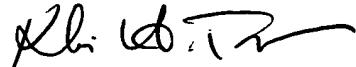
***Conclusion***

8. Additional references made of record and not relied upon are considered to be of interest to applicant's disclosure: see attached USPTO Form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoi H. Tran whose telephone number is (571) 272-6919. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Khoi H Tran  
Primary Examiner  
Art Unit 3651

KHT  
09/20/2006